



**National Trust for
Historic Preservation**
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September 18, 2015

BY ELECTRONIC MAIL

Chairman Martin Honigberg
New Hampshire Site Evaluation Committee
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

**Re: New Hampshire Site Evaluation Committee Rulemaking,
Annotated Draft Final Proposal Rulemaking, SEC Docket No. 2014-04**

Dear Chairman Honigberg and Committee Members:

On behalf of the National Trust for Historic Preservation, I am writing to provide additional comments regarding the proposed amendments to the Site Evaluation Committee (SEC) rules that govern energy project siting in New Hampshire. As noted in our previous comments submitted on March 4, 2015 and March 23 2015, decisions regarding the siting of energy facilities can have profound impacts on historic and cultural resources, and the National Trust appreciates the opportunity to submit comments on the proposed changes to N.H. Administrative Rules, chapters Site 100-300 (the "Annotated Draft Final Proposal"). We are pleased to see that several of the suggestions we made in March were incorporated into the latest draft. With the potential impacts to historic resources in mind, the National Trust's review of the Draft Final Proposal has raised some continuing concerns, noted below. In providing our edits, we have used the text from the Annotated Draft Final Proposal, with existing changes incorporated, and added our changes using a strikethrough and underline format.

As an introductory matter, the National Trust would like to highlight the fact that the National Historic Preservation Act will independently apply to many large-scale projects that are subject to the SEC's jurisdiction. Consistency in review under the state and federal review process, where possible, will benefit developers, agencies, and the public alike. For this reason, some of the suggestions contained in this letter are aimed at aligning SEC review with review under Section 106 of the National Historic Preservation Act, 36 C.F.R. Part 800.

Definitions

To provide consistency for the applicant and to aid the Committee in its review of applications, it would be helpful to have a definition of "adverse effect." The National Trust offers the following definition, as used in Section 106 of the National Historic Preservation Act.

"Adverse effect" An adverse effect is found when a proposed project may alter, directly or indirectly, any of the characteristics of a historic property for

inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in the distance or be cumulative. (See 36 C.F.R. § 800.5(a)(1)).

The National Trust appreciates and supports most of the changes made to Site 102.41, definition of "scenic resources," particularly the recognition and inclusion of historic sites. Based on a review of established definitions of scenic resources in other federal and state guidance, we request the following language:

Site 102.41 "Scenic resources" means resources ~~to which the public has a legal right of access~~ that are:

- (a) Designated pursuant to applicable statutory authority by national, state, or municipal authorities for their scenic quality; ~~or~~
- (b) Conservation lands or easement areas that possess a scenic quality; ~~or~~
- (c) Lakes, ponds, rivers, parks, scenic drives and rides, and other tourism destinations that possess a scenic quality; ~~or~~
- (d) Recreational trails, parks, or areas established, protected or maintained in whole or in part with public funds; ~~or~~
- (e) Historic sites that possess a scenic quality; ~~and/or~~
- (f) Town and village centers that possess a scenic quality.

A scenic resource is not defined by whether or not the public has physical access, it is a scenic resource based on the criteria described in Site 102.41 (a) through (f), which inherently includes places that may have only visual access.

Contents of Application

To aid with clarity and consistency for the applicant and to aid the Committee in its application and interpretation of Site 301.06 and Site 301.14, the following change is recommended for Site 301.03(c)(5):

- (c) Identification of natural, historic, cultural, and other resources at or within the site, on abutting property with respect to the site, ~~or within 100 feet of~~ and within the area of potential visual impact of the site;

For consistency, the same modification should be made to Site 301.03(c)(3) and Site 301.03(c)(4).

Site 301.06 Effects on Historic Sites

Site 301.06 details the information that must be included for the Committee to assess the effects on historic sites and is the foundation for Site 301.14, Criteria Relative to Findings of Unreasonable Adverse Effects. As such, it is necessary for the division of cultural resources to have information on the historic properties affected and whether or not there are adverse effects to those properties. With this information at the outset, there will be increased consistency and timeliness for the applicant. Therefore, the following change is requested:

301.06(c) Finding by the division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, of no historic properties affected, no adverse effect, or adverse effect to historic properties, ~~if determined at the time of application.~~

Site 301.14 Criteria Relative to Findings of Unreasonable Adverse Effects

The Committee’s work to revise the language in this section is appreciated. Site 301.03(c)(5) stipulates that historic and cultural resources are identified in the application and Site 301.06 describes the effects on historic sites. As these sections should be provided in the application, the following modification to Site 301.14(b)(1) is recommended for the sake of clarity and consistency:

(b) In determining whether a proposed energy facility will have an unreasonable adverse effect on historic sites, the committee shall consider:

(1) ~~Whether the application has identified a~~ All of the historic sites and archaeological resources potentially affected by the proposed facility and any anticipated potential adverse effects on such sites and resources, in consultation with the New Hampshire division of historical resources of the department of cultural resources, and if applicable, the federal lead agency;

The National Trust appreciates the opportunity to comment and we thank you for focusing on these important rules. The Committee has invested much time and effort in making a good process even better, and one that will help protect New Hampshire’s distinctive places.

Sincerely,



Sharee Williamson
Associate General Counsel

cc: Charlene Vaughn and Reid Nelson, Brian Lusher, Advisory Council on Historic Preservation
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